

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION,)	
On its own motion)	
)	ICC Docket No. 07-0483
Development of Net Metering)	
Standards Required by P.A. 95-0420)	

**VERIFIED REPLY COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to the schedule established by the Administrative Law Judge (“ALJ”) in this docket, the Retail Energy Supply Association (“RESA”), provides the following comments on the initial comments on the target draft net metering rule circulated by ICC Staff.

RESA saw no need to file initial comments on the draft rule because that rule was a well designed compromise among the parties that resolved numerous issues in a way acceptable to RESA. This is not to say that RESA entirely supports every provision in that draft rule. Instead, RESA was willing to accept some of the provisions with which it disagrees in the spirit of compromise.

Nor does RESA have a position on most of the suggested changes made in the initial comments filed by the parties. For the most part, those suggested changes were already discussed in the negotiations over the draft rule and the parties that opposed those changes will have their opportunity to present their arguments in this round of the briefing. Thus, this reply brief is limited to addressing only two proposals made by other parties in their comments.

Comments of the People of the State of Illinois

RESA objects to the modification proposed by the People of the State of Illinois regarding Section 465.90. The People proposed language that will affect customers that have existing retail contracts with ARES, where those contracts require the customer to pay a fee to terminate service. The People's suggested change would allow a customer to break its contract with an ARES and obtain service from another provider in the event that the customer and the ARES are unable to reach an agreement on the terms and conditions for net metering service. The People argue that this change is necessary in order to prevent customers from having to make the choice between "paying a switching fee to obtain the net metering terms that utilities are required to offer versus staying with an ARES that offers less favorable terms for net metering." The People argue that the early termination fee gives the ARES "unequal bargaining power" over the customer and could lead to them demanding "terms less favorable than the minimum terms specified for utilities." According to the People, this would be "unconscionable conduct." People's Comments at 3-4.

First, RESA must strongly object to the assumption that any ARES that requests terms less favorable than the minimum terms specified by utilities as engaging in unconscionable conduct. An ARES may have technical requirements, personnel restrictions or other differences between itself and the local utility that will affect its required terms and conditions. Failing to mirror the utilities' terms can hardly rise to the level of unconscionable conduct.

Second, ARES are not exercising unequal bargaining power when they expect compliance with their contracts. The People's argument fails to recognize that the concept of unequal bargaining power applies to the analysis of the formation of a contract, not its enforcement during the term of the contract. Put another way, at the time an ARES and a

customer enter into a contract for service, the customer has a meaningful choice in that it can chose to take service from any provider, including other ARESs or the local electric utility. If the customer objects to an ARES's early termination fees, it is free to negotiate different terms. If those negotiations fail, then the customer is free to choose another supplier. Thus, the parties had perfectly equal bargaining power when the contract was created.

Third, early termination fees are not inherently unfair. ARES must expend considerable funds acquiring each new customer. Early termination fees provide an ARES with the opportunity to recover those costs prior to a customer leaving for another provider.

Finally, and most importantly, the explicit intent of the People's proposal is to exempt customers with early termination fees in their contracts from the effects of Section 16-107.5(m). That provision states: "Either the electricity provider or the customer may require compliance with the prices, terms, and conditions of the contract." That provision applies to all customers with contracts with electricity providers. Thus, the People's proposal is an attempt to void Section 16-107.5(m) for a set of customers. Nothing in the Act provides the Commission with authority to override this unambiguous prohibition.

In conclusion RESA objects to the proposal of the People of the State of Illinois to void contracts with early termination fees by modifying Section 465.90(a) of the Rule.

Comments of Constellation NewEnergy, Inc.

Constellation NewEnergy Inc. ("CNE") proposes to add language to Section 465.90(b) to address the fact that ARES licenses often include limitations on the scope of the authority of an ARES to serve certain classes of customers. RESA agrees with CNE that restrictions in ARES licenses should be acknowledged in their obligations under the rule. RESA thus supports the addition proposed by CNE.

Dated: January 23, 2008

Respectfully submitted,
Retail Energy Supply Association

/s/ Stephen J. Moore

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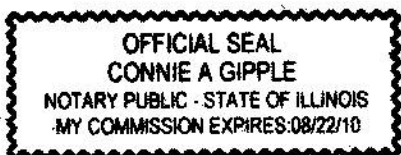
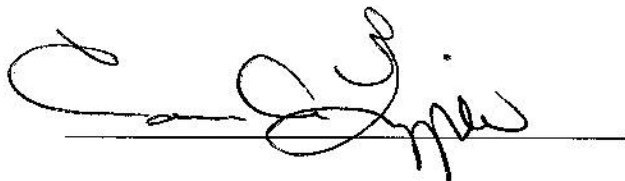
Verification

I, Stephen J. Moore, being first duly sworn, depose and state that I am an attorney with Rowland & Moore LLP, representing Retail Energy Supply Association, and that I have read the foregoing Comments and know the contents thereof and the statements therein contained are true, to the best of my knowledge, information and belief.



Stephen J. Moore
Attorney for Retail Energy Supply Association

Subscribed and Sworn
to before me this
23rd day of January, 2008.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Verified Reply Comments of the Retail Energy Supply Association has been served upon the parties identified on the official service list for this docket maintained by the Clerk of the Illinois Commerce Commission, on January 23, 2008, by electronic mail.

s/ Stephen J. Moore

Stephen J. Moore